

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

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U.S. DISTRICT COURT
N.D. OF ALABAMA

JACQUELINE D. HENDERSON,

Plaintiff,

vs.

WASHINGTON NATIONAL INSURANCE
COMPANY, CONSECO SERVICES, L.L.C.,
THOMAS B. HANEY; and TRUSTMARK
NATIONAL BANK,

Defendants.

Civil Action No.
CV04-B-2433-S

MOTION TO DISMISS

COMES NOW the Defendant, Thomas B. Haney, Jr., and files this, his motion to dismiss, on the following separate and several grounds:

1. The complaint fails to state a claim against this Defendant upon which relief may be granted and, as such, this Defendant has been improperly and fraudulently joined in this matter solely in an attempt to prevent the removal of this case to Federal Court.

2. The complaint and each of the claims and counts therein are barred by the applicable statute of limitations.

3. Plaintiff's claims of fraud (first cause of action) and fraudulent concealment (second cause of action) are barred by the statute of limitations of two (2) years, Ala. Code §6-2-38 (1975), and the savings provision contained in Ala. Code §6-2-3 which tolls the statute of limitations until the alleged fraud has been discovered has not been plead with the required specificity. In further support of this defense, Defendant adopts and incorporates herein the grounds and arguments set forth in the Defendant Washington National Insurance Company's Motion to Dismiss.

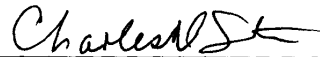
4. Plaintiff's claim of conspiracy (third cause of action) fails to state a claim upon which relief can be granted because the complaint shows on its face that it is barred by the statute of limitations. In addition, since there are no viable underlying claims against the Defendant to support Plaintiff's conspiracy claims against this Defendant, Plaintiff's conspiracy claim is due to be dismissed. In further support of this defense Defendant adopts and incorporates herein the grounds and arguments set forth in the Defendant Washington National Insurance Company's Motion to Dismiss.

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5. Plaintiff's claim for breach of fiduciary duty (fourth cause of action) is barred by the two (2) year statute of limitation. Moreover, no fiduciary relationship exists between an applicant for insurance and/or insured and her soliciting agent; consequently, Plaintiff's claim for breach of fiduciary duty is due to be dismissed on the ground also. In further support of this defense Defendant adopts and incorporates herein the grounds and arguments set forth in the Defendant Washington National Insurance Company's Motion to Dismiss.

6. Plaintiff's fifth cause of action (breach of contract) does not state a claim against this Defendant, nor could it since the face of the complaint shows there was no contract in existence between Thomas B. Haney, Jr., an individual and the Plaintiff and the law recognizes that an agent for a disclosed principal cannot be personally liable for breach of contract. Moreover, any claim for breach of contract against this Defendant would be barred by the statute of limitations.

Respectfully submitted,



Charles D. Stewart
Attorney for Defendant
Thomas B. Haney, Jr.

OF COUNSEL:

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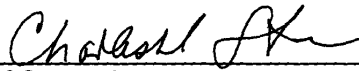
CERTIFICATE OF SERVICE

I hereby certify that I have serves a copy of the foregoing document upon the following by placing same in the U.S. Mail, postage prepaid and properly addressed this the 27 day of August, 2004.

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